

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**CIVIL MINUTES**

<b>Date:</b> July 19, 2024	<b>Time:</b> 12:00-12:25 p.m.	<b>Judge:</b> Virginia K. DeMarchi
<b>Case No.:</b> 19-cv-04312-BLF	<b>Case Name:</b> Tevra Brands LLC v. Bayer HealthCare LLC	

**Attorney for Plaintiff:** Daniel Owen, Colby Springer

**Attorney for Defendant:** Sean Callagy

**PROCEEDINGS**

The Court held a discovery teleconference to resolve a dispute between plaintiff Tevra Brands, LLC (“Tevra”) and defendant Bayer Healthcare LLC (“Bayer”) regarding the scope of Tevra’s privilege waiver, as described in the July 17, 2024 declaration of Robert Scharf (*see* Dkt. No. 433 ¶ 15). The parties presented their respective arguments, and the Court ruled as follows:

There is no dispute that Tevra has expressly and intentionally waived the attorney-client privilege regarding the spreadsheet appended as Exhibit E to Mr. Scharf’s declaration. *See* Dkt. No. 433 ¶ 15 & Ex. E. The scope of that waiver is determined by Federal Rule of Evidence 502(a), which provides, in relevant part, that when a disclosure “is made in a federal proceeding . . . and waives the attorney-client privilege or work product protection, the waiver extends to an undisclosed communication or information in a federal or state proceeding only if: (1) the waiver is intentional; (2) the disclosed and undisclosed communications or information concern the same subject matter; and (3) they ought in fairness to be considered together.” Fed. R. Evid. 502(a).

Under the circumstances presented, the proper scope of Tevra’s privilege waiver extends to the production of (1) the eleven versions of the spreadsheet appended as Exhibit E to Mr. Scharf’s declaration (and associated metadata),<sup>1</sup> and (2) communications between and among Mr. Scharf, Aaron Shaddy, Caryn Stichler, and Tevra’s counsel regarding the preparation of the eleven versions of that spreadsheet. *See* Dkt. No. 433 ¶¶ 14-15.

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<sup>1</sup> The parties reported that Tevra has given Bayer the eleven versions of the spreadsheet and associated metadata.